

Status of Rule Development

9:30 – 10:00

Recap of conclusions & outcomes from meeting #2

- 1) Different points of view about terminology & ultimate purpose of the rule – management, virtual elimination, etc.
- 2) Purpose of the list – concern by business interests about possible ‘unintended consequences’ of monitoring; agreement with other purposes of listing
- 3) Major differences in perspectives on the size of the list and associated criteria: long list, lower thresholds; short list, higher thresholds
- 4) General agreement that list should be based on sound science
- 5) General agreement that Ecology’s approach & the criteria should be based on work done by others – don’t start from scratch or reinvent the wheel; however, differences about whether other entities have the right standards or criteria
- 6) Different points of view about inclusion of metals on the list of PBTs
- 7) General agreement that there should be one list – but points of view about ranking and tiering very depending on the length of the list
- 8) Discussion about changing lists and criteria over time focused on requirements of the administrative procedures act – that any change would have to be made by rule.

Overview and discussion of initial PBT Rule outline

- 1) Does the order of the PBT rule make sense?
- 2) Is it organized and arranged in a logical way?
- 3) Is there anything missing, that should be included in the outline?

Overview and discussion of Part 1 –General Provisions of Draft PBT Rule

- 1) Have we correctly captured the 4 purposes of the rule, as reflected in the budget legislation and the Executive Order? Are there other purposes we need to include?
- 2) Have we correctly captured the range of ideas expressed at the Sept. 8 meeting regarding the goals of the PBT rule? Several different goals were expressed, as indicated in the footnotes. Ecology has not finalized a "final goal" yet to be included in the rule, but we want to make sure we have captured what was said by all of you previously.
- 3) Is there anything missing from this first section (part 1)?
- 4) Does this approach for Part 1 make sense?
- 5) Do we need the Applicability section?
- 6) What are your thoughts about having the Administrative Principles Section? In this section we are trying to capture the points you raised at the August 18 meeting when we discussed "What makes a good rule?"

Criteria & process for selecting chemicals for CAP Development

10:00 - noon

What criteria should be used to select chemicals for a CAP?

- Ranking/prioritizing
- Criteria/factors
- Approach/frameworks

What process should Ecology follow to select chemicals for a CAP?

- Ranking/prioritizing
- Stakeholder involvement
- Public involvement
- Timelines

Ecology's experience with Mercury and PBDEs

Why Mercury was selected as the first CAP (Ecology's thinking in early 2002)

- 2002 Legislation
- Department of Health shared similar concerns
- Widespread uses and releases of Hg in WA
- Statewide Department of Health Fish Consumption Advisories for canned tuna, swordfish, shark, tilefish, king mackerel, tuna steaks
- 5 local fish consumption advisories: Lake Roosevelt, Lake Whatcom, Eagle Harbor, Duwamish River, Sinclair Inlet
- 30 listings for Hg on Clean Water Act 303d List
- 15 Toxic Cleanup Sites with Hg as a contaminant
- Readily available alternatives for several mercury-containing products
- Recycling opportunities for certain mercury-containing products
- Similar Mercury actions plans drafted elsewhere (i.e. EPA [still draft], Massachusetts, New Hampshire, NE Govs/Eastern Canadian Premiers Mercury Action Plan, Michigan, Great Lakes Bi-National Strategy Mercury Action Plan)

Why PBDEs were selected as next CAP?

- Executive Order direction
- Department of Health shared similar concerns
- Awareness of studies showing increasing levels of PBDEs in human breast milk
- Generally increasing environmental levels
- Legislation passed in other states (i.e. California)

Examples from Elsewhere

- Stockholm Convention
- Others

Criteria & process for selecting materials for a CAP

Should the PBT chemicals that are on the list be ranked and prioritized? Purposes:

- Select Chemicals for CAP Preparation
- Consider Factors in Addition to Intrinsic PBT Characteristics
- Identify Data Gaps and Data Collection Needs
- Other Reasons/Purposes ???

What characteristics should be considered when designing an approach to ranking and prioritizing PBTs?

- Effective Approach for Promoting Action (“Worst First”)
- Efficient Use of Resources (Avoid Paralysis by Analysis)
- Scientific Soundness
- Accounts for Scientific Uncertainty and Variability
- Transparent (not another black box)
- Predictable/Reproducible
- Other Process Characteristics???

What factors should be used to rank & prioritize chemicals?

- PBT Characteristics (intrinsic hazard)
- Uses in WA
- Releases to the WA Environment
- Presence in the WA Environment
- Exposure Pathways (health/ecological risk)
- Opportunities for Reduction, Minimization or Elimination
- Technical Feasibility and Costs
- Other Regulatory Program Requirements
- Other Factors or Considerations?????

Are these factors appropriate as criteria for selecting chemicals for a CAP?

- Any others?

What are possible approaches for ranking/prioritizing PBT chemicals?

- Quantitative Scoring Frameworks - Input factors are assigned numeric values and output is a numeric score
- Qualitative Evaluation Frameworks - Input factors are assigned qualitative score (e.g. high, medium, low)
- Expert Committee Frameworks – Technical experts review information and prepare recommendations base on best professional judgment
- Hybrid Frameworks
- Other Frameworks ????

Other Questions/Issues:

Should this ranking & prioritizing process be used as the basis for selecting materials for a CAP? Should chemicals be selected in order of priority on the list?

Should all chemicals on the list be subject to a CAP?

What involvement, if any, should stakeholders have in the selection process?

How should the process of selecting chemicals be communicated to the public and stakeholders?

Should timelines be included in the rule related to the selection process?

Process for developing and implementing Chemical Action Plans

1:30 – 3:00

Process for developing and implementing Chemical Action Plans

- Approach to be followed and specified in the rule
- Stakeholder involvement
- Economic/cost analyses
- Timeframe

CAP Implementation

Ecology's experience with Mercury and PBDEs

Mercury Chemical Action Plan development

- Legislative direction to establish an external advisory committee with representation from business, agriculture, environmental groups, community groups, local government and public health agencies
- Involve Department of Health in the chemical action plan development process
- Draft the plan within a certain timeline
- Allow for public comment of the draft plan
- Final plan had several recommendations (i.e. voluntary reductions, regulatory updates, legislative, research, monitoring, education, further studies)

PBDE Chemical Action Plan development

- Ecology determined to follow similar process that was followed in Mercury Chemical Action Plan development
- Involve Department of Health in the chemical action plan development process
- Draft the plan within a certain timeline – as directed by Executive Order
- Allow for public comment on the draft plan
- Final plan to (likely) have several recommendations (i.e. voluntary reductions, regulatory updates, legislative, research, monitoring, education, further studies)

Is the approach used for Mercury & PBDE's a good model to be written into rule?

- Convene an Advisory Committee composed of stakeholders and experts
- Involve other agencies (e.g. Health Department)
- Follow a timeline
- Allow for public comment
- Provide for broad range of possible recommendations

What other approaches for CAP development should be considered?

What economic or cost analyses should be applied?

Should a timeframe be specified?

Should there be an initial background research phase?

What other processes or procedures should be specified in the rule?

CAP Implementation

Should implementation of the CAP be addressed in the rule?